

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to FIG. 3 . This sheet, which includes FIG. 3, replaces the original sheet including FIG. 3.

Attachment: Replacement Sheet 2/6

## **REMARKS/ARGUMENTS**

The present application has been carefully reviewed in light of the May 2, 2007 Office Action. In light of the foregoing amendments and the following remarks, applicant respectfully requests reexamination and reconsideration of the application.

### **DRAWINGS AND SPECIFICATION**

The drawings were objected to for using the same reference number (10 and 18) to designate the color selector devices of FIGS. 1 and 3. In response, applicant has amended FIG. 3, and submits herewith a Replacement Sheet in order to overcome the rejection.

The objections to the drawings in paragraph 2 of the Office Action have also been corrected, as noted above in the Amendments to the Specification and Replacement Sheet of drawings.

Furthermore, the Abstract has been amended to cancel the phrase "of the present invention".

In light of the foregoing amendments, applicant believes that all of the drawing and specification objections are overcome.

### **CLAIM REJECTIONS**

Claims 2 and 13 have been amended to change "from the list" to "from a list", so as to provide proper antecedent basis.

Claims 1-9 and 12-17 were rejected under 35 U.S.C. §102(b) as being anticipated by Tracy et al. (U.S. Patent No. 6,139,325). It is noted that the inventors of the present invention are the same inventors as the '325 patent. The '325 patent is directed to a color selector device, sometimes referred to as a color wheel, for determining color combinations. It is comprised of a base having a plurality of color groups represented thereon. Each color group section has a window formed therein. A wheel is rotatably attached to the base, and includes a plurality of geometric shapes

having a primary vertex. When the primary vertex is pointed to a chosen color group section, the remaining vertices point to harmonious color combinations.

Page 8 of the Specification of the current application discusses the shortcomings of such color wheel selector devices. For example, the user is required to bring the color selector device to the store to find the exact matching pieces or color coordinating pieces. The user must hold the color selector device up to the piece to be purchased to insure an exact or coordinating match. However, colors may appear inconsistent because of variations in artificial lighting, ambient color inferences from adjacent products, etc. Often, it is inconvenient for the user to have a color selector device on his or her person while shopping. Also, in many instances, the piece to be purchased is not physically present in the store, but is ordered, such as through the Internet, catalogue, etc. Thus, the consumer hopes that the good which is purchased has colors which in fact match or coordinate based on the photograph or color description in the advertising materials.

The Specification also describes how manufacturers attempt to label goods with the colors thereon. However, it is not uncommon for manufacturers to identify different colors by the same name. For example, when purchasing paint, a sea foam green from one manufacturer may in fact be completely different in appearance than the sea foam green of another paint manufacturer. Similarly, a cherry or forest green color description for a good manufactured by one entity may in fact have a different color and appearance than a cherry or forest green product from another company.

The present invention is directed to a method for creating a color matching and coordinating reference system for use by manufacturers and consumers of goods so that a consumer upon using an assigned identification code or color name is the desired color and will match or coordinate as desired. Thus, the present invention is a color matching and coordinating reference system, as opposed to a color wheel selector device, as taught and disclosed in the '325 patent.

In the present invention, the good is labeled with the identification code, or color name representing the identification code, such that manufacturers and

consumers can identify and consistently reference the color of the good. For example, a couch pillow may have a certain identification code, or corresponding color name, to identify the color of the pillow. When desiring to purchase a blanket or throw, a consumer or manufacturer, using the present invention, would label the blanket or throw with the same identification code or color name if in fact the pillow and throw exactly matched. This could be done without the use of a color wheel selector device and with complete certainty, even if ordering through a catalogue, Internet, etc.

Independent claim 1 has been amended to recite:

assigning a unique identification code for each of a plurality of colors, the identification code comprising color family indicia and color value indicia;

manufacturing a good having a color;

selecting an identification code representing a color match with the color of the good; and

labeling the good with the identification code, or a color name representing the identification code, to identify and consistently reference the color of the good.

For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001, 18 USPQ2d 1896 (Fed. Cir. 1991).

Tracy does not teach or disclose every element of the claimed invention, as recited in claim 1. More particularly, there is no discussion or suggestion of selecting an identification code representing a color match with the color of the manufactured good. Nor is there any teaching or suggestion of labeling the good with the identification code, or color name representing the identification code, to identify and consistently reference the color of the good. Moreover, one of ordinary skill in the

field of the invention would view significant differences between the present invention and the '325 reference. Thus, applicant respectfully submits that this claim is not anticipated by the '325 patent. Accordingly, those claims depending from claim 1 are not anticipated either.

Independent claim 12 was amended to include the “labeling the good with the identification code, or the color name assigned to the identification code, to identify and consistently reference the color of the good” as well, and is not anticipated for the same reasons indicated above. The '325 patent also does not teach assigning a unique identification code for each of a plurality of colors comprising color family indicia, color value indicia, and color selector device indicia representing the color selector device on which the color is disposed, as recited in claim 12. Nor does the '325 patent disclose selecting an identification code representing a color match with the color of the manufactured good, as recited in claim 12. Nor does the '325 patent disclose coordinating color identification codes using a table listing coordinating color identification codes or assigned color names, as recited in claim 12. Accordingly, applicant respectfully asserts, independent claim 12, and those claims depending therefrom, are not anticipated by the '325 patent as the referenced patent does not teach and disclose every element of the claimed invention, as recited in independent claim 12.

Claim 12 has also been amended to incorporate the step of assigning a color name to each identification code. In the Office Action, claim 10 (which recites the step of assigning a unique color name to each identification code) was rejected under 35 U.S.C. §103(a) as being unpatentable over the '325 patent in view of Adkins et al. (U.S. Patent No. 4,399,353) and further in view of the “Learning Web Design” website. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. M.P.E.P. §2143.03 (citing *In re Royka*, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970)).

Applicant respectfully submits that Adkins and the “Learning Web Design” references fail to overcome the shortcomings of the ‘325 patent with respect to independent claims 1 and 12, and thus the combination does not disclose the all of the claim limitations in these claims. More particularly, neither Adkins nor “Learning Web Design” teach of selecting an identification code representing a color match with the color of the good, and labeling the good with the identification code, or a color name representing the identification code, to identify and consistently reference the color of the good. As such, applicant respectfully asserts that the combination of these references fail to render obvious the claims, as amended.

None of the cited references address the existence of the problem solved by the present invention. That is, the present invention addresses the problem of consistently and uniformly creating and assigning an identification code for each of a plurality of colors. This identification code may be represented with a color name. The consistent and approved use of the color identification code and/or assigned color name which is labeled on goods allows different manufacturers (or a manufacturer of different goods) to utilize the same identification code and/or assigned color name for exactly matching colors. This benefit is translated to the consumer, who can then purchase goods labeled with the identification code and/or assigned color name and know that the color will exactly match, or coordinate with a color having a coordinating identification code and/or color name. This, as described above, has not been the case in the past, but none of the cited references mention this problem as they are directed at overcoming other, unrelated, problems. In the rare case where the prior art does not appreciate the existence of the problem solved by the invention, the applicant’s recognition of the problem is, in itself, strong evidence of the non-obviousness of the invention. *In re Nomiya et al.*, 184 USPQ 607, 612-613 (CCPA 1975).

New claims 25, 28 and 30 recite the step of submitting the good to a governing body to compare and match the color of the good with the plurality of colors each assigned a unique identification code. In the present invention, the manufacturers

submit sample goods to a governing body which confirms or assigns the identification code for each of the colors of the good. The good is then labeled with the one or more identification codes, or corresponding assigned color names. None of the cited references address such a step.

New claims 26, 29 and 31 recite the step of labeling the good with indicia representing that the governing body has compared and matched the color of the good with the unique identification code. In this manner, the consumers would know that the identification code and color name could be relied upon for exact matches and coordinating colors. This is not discussed or suggested whatsoever in any of the cited references.

New claim 32 discloses the step of providing a plurality of color selector devices bearing the plurality of colors, the color scale indicia of the identification code for each color corresponding to the color selector device bearing the particular color. This step is not disclosed in the cited references either.

## **CONCLUSION**

From the foregoing amendments and remarks, applicant respectfully asserts that the currently pending claims, as amended, are in condition for allowance, notice of which is hereby respectfully requested.

Respectfully submitted,

KELLY LOWRY & KELLEY, LLP

/Scott W. Kelley/

Scott W. Kelley  
Registration No. 30,762

SWK:nh  
6320 Canoga Avenue, Suite 1650  
Woodland Hills, California 91367  
(818) 347-7900